U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

D9

FILE: EAC 03 266 52192 Office: VERMONT SERVICE CENTER Date: AUG 23 2005

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(i)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS: This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Marie Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Vermont Service Center Director denied the nonimmigrant visa petition in a decision dated August 20, 2004. The petitioner appealed the director's decision to deny the petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a tennis club. The beneficiary is a tennis player. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking classification of the beneficiary under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i), for a period of three years. The petitioner seeks to employ the beneficiary temporarily in the United States to teach and play tennis.

The director denied the petition, finding the petitioner had failed to establish that the beneficiary is an internationally recognized athlete, and failed to submit a consultation and itinerary as required by the regulation at 8 C.F.R. §§ 214.2(p)(2)(ii)(C) and (D). The director denied the petition, in part, finding that the petitioner failed to submit evidence of a contract as required by 8 C.F.R. § 214.2(p)(2)(ii)(B). Finally, the director denied the petition, finding that the petitioner had failed to submit a SEVIS Form I-20 for the beneficiary.

On appeal, the petitioner submits additional evidence.

Under section 101(a)(15)(P)(i) of the Act, an alien having a foreign residence which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or sponsor. Section 214(c)(4)(A) of the Act, 8 U.S.C. § 1184(c)(4)(A), provides that section 101(a)(15)(P)(i) of the Act applies to an alien who:

> (i) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, and
>
> (ii) seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.

The regulation at 8 C.F.R. § 214.2(p)(1)(i) provides for P-1 classification of an alien:

> *General.* Under section 101(a)(15)(P) of the Act, an alien having a residence in a foreign country which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or a sponsor. Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(P)(i) of the Act as an alien who is coming to the United States to perform services as an internationally recognized athlete, individually or as part of a group or team...

The regulation at 8 C.F.R. § 214.2(p)(1)(ii)(A) provides for P-1 classification of an alien:

> (1) To perform at specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level or performance...

The regulation at 8 C.F.R. § 214.2(p)(2)(ii) requires, in part, that a petition for an internationally recognized athlete include:

> (A) The evidence specified in the specific section of this part for the classification;

(B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed; and

(C) An explanation of the nature of the events or activities, the beginning and ending dates for the events and activities, and a copy of any itinerary for the events and activities.

(D) A written consultation from a labor organization.

The regulation at 8 C.F.R. § 214.2(p)(3) states that:

Internationally recognized means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country.

The regulation at 8 C.F.R. § 214.2(p)(4)(i)(A) provides, in pertinent part, that:

P-1 classification as an athlete in an individual capacity. A P-1 classification may be granted to an alien who is an internationally recognized athlete based on his or her own reputation and achievements as an individual. The alien must be coming to the United States to perform services which require an internationally recognized athlete.

The regulation at 8 C.F.R. § 214.2(p)(4)(ii) sets forth the documentary requirements for P-1 athletes as:

(A) *General.* A P-1 athlete must have an internationally recognized reputation as an international athlete or he or she must be a member of a foreign team that is internationally recognized. The athlete or team must be coming to the United States to participate in an athletic competition which has a distinguished reputation and which requires participation of an athlete or athletic team that has an international reputation.

(B) *Evidentiary requirements for an internationally recognized athlete or athletic team.* . . . A petition for an athlete who will compete individually or as a member of a U.S. team must be accompanied by evidence that the athlete has achieved international recognition in the sport based on his or her reputation. A petition for a P-1 athlete or athletic team shall include:

(1) A tendered contract with a major United States sports league or team, or a tendered contract in an individual sport commensurate with international recognition in that sport, if such contracts are normally executed in the sport, and

(2) Documentation of at least two of the following:

(i) Evidence of having participated to a significant extent in a prior season with a major United States sports league;

(ii) Evidence of having participated in international competition with a national team;

> (iii) Evidence of having participated to a significant extent in a prior season for a U.S. college or university in intercollegiate competition;
>
> (iv) A written statement from an official of a major U.S. sports league or an official of the governing body of the sport which details how the alien or team is internationally recognized;
>
> (v) A written statement from a member of the sports media or a recognized expert in the sport which details how the alien or team is internationally recognized;
>
> (vi) Evidence that the individual or team is ranked if the sport has international rankings; or
>
> (vii) Evidence that the alien or team has received a significant honor or award in the sport.

The regulation at 8 C.F.R. § 214.2(p)(7)(i) requires, in pertinent part:

> (A) Consultation with an appropriate labor organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for P-1, P-2, or P-3 classification can be approved.

The first issue to be addressed is whether the petitioner established that the beneficiary is internationally recognized athlete as defined by the pertinent statute and regulations. The petitioner submitted the following evidence:

- An excerpt from a 2002 media guide published at Lee University that states that the beneficiary would be "near the top of [its] lineup in both singles and doubles."
- A letter from the Lee University Director of Athletics stating that the beneficiary had been a "valuable member of the Lee University men's tennis team for three years and was a major factor in taking a fledgling team with a losing record and making it a winner during that short period of time."
- An article dated July 11, 2003 in an unnamed publication stating that the beneficiary defeated another player 6-2.
- A barely legible undated article about the Lee University tennis team.
- A letter dated September 12, 2003, written by [redacted], Russian National Junior Tennis Team coach, stating that the beneficiary began participating in national tennis tournaments in 1990 and became a "nationally established tennis player."
- A letter written by the manager and tennis director of the Colonial Family Sports Center, Cincinnati, Ohio, stating that the beneficiary played tennis "in many high level junior tournaments" while he attended high school and "on the highest rated interclub teams."

- A list of the top 100 tennis players in the Russian Federation.
- The beneficiary's resume.

Finding the evidence insufficient to establish that the beneficiary is an internationally recognized athlete, the director requested the petitioner to submit additional evidence on January 20, 2004. The director specifically requested evidence relating to the evidentiary requirements set forth at 8 C.F.R. § 214.2(p)(4)(ii), *supra*. In response, the petitioner submitted a statement indicating that it was unable to submit additional documentation from Russia because the beneficiary had played tennis prior to the emergence of the Russian Federation and many tennis clubs and institutions had subsequently collapsed. The petitioner further indicated that the beneficiary was the captain of his college varsity team and listed numerous awards garnered by the beneficiary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner failed to submit independent corroborating evidence in support of its claims.

The petitioner submitted a letter from [redacted], a former Ukrainian tennis referee, stating that the beneficiary "repeatedly participated in the international competitions [in] tennis . . . in Kiev (Ukraine) in the period since 1991 [to] 1995."

The petitioner submitted a certificate stating that the beneficiary participated in international competitions from 1991 to 1995 in Latvia, Ukraine and Moscow.

The petitioner submitted evidence that the beneficiary received a first place award in 1992 in Obninsk, Russia; a third place award for boys in Moscow, Russia in 1993; and a second place award in doubles at an open junior tennis tournament in Kiev, Ukraine in 1993.

The letter from [redacted] the certificate, and awards were submitted with translations. However the translations were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). The list of the top 100 tennis players was not translated. For that reason, they may not be considered. Even if they were considered, the evidence is insufficient to establish that the beneficiary is an internationally recognized tennis player.

The next issue is whether the petitioner submitted the required consultation, itinerary and contract. The director requested these items in her request for additional evidence. The petitioner indicated that it was not submitting these items, stating that an appropriate entity to provide a consultation did not exist. The regulation at 8 C.F.R. § 214.2(p)(7)(F) provides that if the petitioner establishes that an appropriate labor organization does not exist, CIS shall render a decision on the evidence of record. The petitioner submitted no evidence establishing that an appropriate labor organization does not exist. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, the petitioner's failure to submit an itinerary and either a written contract or the terms of an oral contract, is fatal to the petition.

Beyond the director's decision, the petitioner failed to establish that the beneficiary is coming to the United States to compete at an internationally recognized level as required by 8 C.F.R. § 214.2(p)(1)(ii)(A). For this additional reason, the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.